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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Amanda Mix,

No. CV-15-01102-PHX-JJT

10 Plaintiff,

**ORDER**

11 v.

12 JPMorgan Chase Bank, NA,

13 Defendant.  
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At issue is Defendant's Motion for Summary Judgment (Doc. 37, Mot. Summ. J.). The Court also considers Plaintiff's Motion to Stay Action under Federal Rule of Civil Procedure 56(d) (Doc. 42 at 5, 9, Mot. to Stay). Because the parties' briefs were adequate for the Court to resolve the issues arising in the parties' Motions, the Court finds these matters appropriate for decision without oral argument. *See* LRCiv 7.2(f). For the reasons set forth below, the Court grants Defendant's Motion for Summary Judgment and denies Plaintiff's Motion to Stay Action under Rule 56(d).

21 **I. BACKGROUND**

22 In January 2015, Amanda Mix (hereinafter "Plaintiff") applied for and accepted a  
23 contingent worker position at JPMorgan Chase Bank (hereinafter "Defendant"). (Doc. 38  
24 ¶¶ 15–16.) During the hiring process, Defendant obtained fingerprints from Plaintiff in  
25 order to obtain a Federal Bureau of Investigation ("FBI") background check on her.  
26 (Doc. 38 ¶¶ 17–18.) As a result of the outcome of the FBI's fingerprint background  
27 check, Defendant revoked Plaintiff's offer of employment. (Doc. 1, Compl. ¶ 25.) While  
28 Plaintiff alleges she "unsuccessfully attempted to obtain more information about the

1 background check process,” (Doc. 43 ¶ 19), Defendant contends that, after “receiving the  
2 fingerprint results from the FBI via Fieldprint,” Plaintiff failed to provide additional  
3 information needed to “determine Plaintiff’s eligibility for assignment,” (Doc. 38 ¶ 19).

4 On June 16, 2015, Plaintiff filed a Complaint bringing a putative class action  
5 against Defendant under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et*  
6 *seq.* (Compl. ¶ 1.) Plaintiff alleges that Defendant “routinely obtains and uses information  
7 in consumer reports to conduct background checks on prospective ‘contingent workers,’  
8 and frequently relies on such information . . . as a basis for adverse employment actions,  
9 including the refusal to hire.” (Compl. ¶ 1.) After Defendant “used or obtained a  
10 ‘consumer report[]’ . . . in evaluating Plaintiff for prospective employment,” Plaintiff  
11 claims that Defendant willfully violated the disclosure and authorization requirements of  
12 the FCRA “in violation of Plaintiff’s rights and the rights of the other members of the  
13 putative class.” (Compl. ¶¶ 3–5.) Particularly, Plaintiff states that Defendant violated the  
14 FCRA by failing to make “a clear and conspicuous disclosure” to Plaintiff that the  
15 “consumer report may be obtained for employment purposes” and by failing to provide  
16 “Plaintiff with a copy of her report or a notice of her rights under the FCRA before  
17 communicating to Plaintiff that her offer had been revoked.” (Compl. ¶¶ 30, 36.)

18 On August 17, 2015, Defendant filed an Answer (Doc. 13) denying liability under  
19 the FCRA. At the Scheduling Conference on December 14, 2015, the Court ordered that  
20 each party file a brief “on whether phased discovery in support of the preliminary  
21 determination of the threshold issue of standing is or is not appropriate.” (Doc. 31.)  
22 Defendant filed a Brief in Support of Phased Discovery Regarding the Threshold  
23 Standing Issue (Doc. 32, Def.’s Br. on Phased Disc.), contending that “Plaintiff’s FCRA  
24 claims hinge on a narrow but dispositive issue: was the report at issue a ‘consumer  
25 report’ issued by a ‘consumer reporting agency’ (‘CRA’) as those terms are defined by  
26 the FCRA? If the information Chase received is not a consumer report, then this case is  
27 over.” (Def.’s Br. on Phased Disc. at 1.) Accordingly, Defendant argued that “[d]iscovery  
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1 should be phased to allow an early determination of whether the report at issue is a  
2 consumer report and, thus, subject to the FCRA.” (Def.’s Br. on Phased Disc. at 2.)

3 In its brief opposing phased discovery (Doc. 33, Pl.’s Br. on Phased Disc.),  
4 Plaintiff claimed that “whether the FCRA applies to this action at all” is not “a  
5 ‘threshold’ question.” (Pl.’s Br. on Phased Disc. at 1.) “Under the plain language of the  
6 FCRA, Fieldprint is a [CRA] under § 1681a(f)” and “the information it furnished to  
7 Chase about [Plaintiff] constitutes a ‘consumer report’ under § 1681a(d).” (Pl.’s Br. on  
8 Phased Disc. at 1.) As a result, Plaintiff asked that the Court reject Defendant’s “request  
9 that discovery be limited.” (Pl.’s Br. on Phased Disc. at 4.) After considering the parties’  
10 briefs, the Court ordered on May 12, 2016 that “the parties may conduct discovery  
11 limited to the question of whether, in the context posed by Plaintiff, Fieldprint acts as a  
12 [CRA] furnishing consumer reports under the FCRA.” (Doc. 35.) The parties were to  
13 complete discovery on this issue by June 17, 2016. (Doc. 35.)

14 On July 1, 2016, after the close of discovery, Defendant filed a Motion for  
15 Summary Judgment, contending as follows:

16 [T]he FBI is not a [CRA] regulated by the FCRA. Moreover,  
17 the method by which [Defendant] obtains the information on  
18 applicants—through use of an FBI-authorized ‘channeler’ of  
19 data—is not governed by the FCRA. [Defendant’s] FBI  
20 channeler, Fieldprint, Inc., does not act as a CRA when it  
21 transmits unadulterated information it obtains from the FBI  
22 directly to [Defendant]. The necessary conclusion is that the  
23 FBI information [Defendant] receives through Fieldprint’s  
24 channeling services is not subject to the FCRA. Thus,  
25 Plaintiff’s argument . . . is devoid of merit, and summary  
26 judgment is appropriate.

27 (Mot. Summ. J. at 2.)

28 On July 28, 2016, Plaintiff filed a Response to Defendant’s Motion for Summary  
Judgment that included, in the alternative, a Motion to Stay Action under Rule 56(d).  
Plaintiff claims that Defendant “asks the Court to commit a serious error of law in finding  
that its background check company, Fieldprint, is not a [CRA]” because “the definition of  
CRA is not case-dependent.” (Resp. at 1–2.) “Because Fieldprint ‘regularly engages’ in  
the practice of assembling and evaluating consumer information to be sold to third parties

1 as consumer reports, . . . the information it transmitted to [Defendant] constitutes a  
2 consumer report.” (Resp. at 2.)

3 On July 29, 2016, Defendant filed a Reply Brief (Doc. 46, Reply) in support of its  
4 Motion for Summary Judgment. To the extent that Plaintiff’s Response claims that fitness  
5 determination or Criminal History Record Information (“CHRI”) adjudication services  
6 encompass “evaluating consumer credit information” as that term is used in the definition  
7 of a CRA under 15 U.S.C. § 1681a(f), (Resp. at 4–5), Defendant contends that “Fieldprint  
8 does not perform fitness determination or CHRI adjudication services” in general,  
9 including not for Defendant, (Reply at 3–4).

10 On August 8, 2016, Plaintiff filed a Motion to Strike Affidavit Attached in  
11 Support of Chase’s Reply or, in the Alternative, Request for Leave to File a Surreply  
12 (Doc. 48), arguing that Defendant included an argument for the first time in its Reply and  
13 supported it with a new affidavit. On August 25, 2016, Defendant filed a Brief in  
14 Opposition to Plaintiff’s Motion to Strike Affidavit (Doc. 49). The Court entered an  
15 Order regarding these Motions on August 31, 2016:

16 Underlying Plaintiff’s request is her position that the Fair  
17 Credit Reporting Act (FCRA) applies to any entity that  
18 assembles or evaluates information about consumers, whether  
19 or not the entity did so in the transaction at issue. (*See* Doc.  
20 42 at 7.) [Defendant] argues that the requirements of the  
21 FCRA do not apply to an entity that did not assemble or  
22 evaluate consumer information in the transaction at issue,  
23 even if the entity may have done so in other transactions. (*See*  
24 Doc. 46 at 4–5.) If the Court agrees with [Defendant’s]  
25 position on this point, a Sur-Reply will not likely be relevant  
26 to the Court’s resolution of the pending Motion for Summary  
27 Judgment. However, because the Court has not yet resolved  
28 the issue presented by the parties, the Court will allow  
Plaintiff to file a Sur-Reply to Defendant’s Reply, if she so  
desires.

(Doc. 50 at 1–2.) Plaintiff filed a Sur-Reply (Doc. 52) on September 9, 2016, which the  
Court has considered along with all of the parties’ other briefs.

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## II. MOTION FOR SUMMARY JUDGMENT

### A. Legal Standard

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when: (1) the movant shows that there is no genuine dispute as to any material fact; and (2) after viewing the evidence most favorably to the non-moving party, the movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288–89 (9th Cir. 1987). Under this standard, “[o]nly disputes over facts that might affect the outcome of the suit under governing [substantive] law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine issue” of material fact arises only “if the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Id.*

In considering a motion for summary judgment, the court must regard as true the non-moving party’s evidence if it is supported by affidavits or other evidentiary material. *Celotex*, 477 U.S. at 324; *Eisenberg*, 815 F.2d at 1289. The non-moving party may not merely rest on its pleadings; it must produce some significant probative evidence tending to contradict the moving party’s allegations, thereby creating a question of material fact. *Anderson*, 477 U.S. at 256–57 (holding that the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment); *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968).

“A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). “Summary judgment must be entered ‘against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.’” *United States v. Carter*, 906 F.2d 1375, 1376 (9th Cir. 1990) (quoting *Celotex*, 477 U.S. at 322).

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1           **B.     Analysis**

2           At issue is whether there remains a genuine dispute of material fact as to whether  
3     Fieldprint is a CRA furnishing consumer reports under the FCRA, 15 U.S.C. § 1681 *et*  
4     *seq.* The FCRA defines a CRA as:

5                     any person which, for monetary fees . . . *regularly* engages in  
6                     whole or in part in the practice of *assembling or evaluating*  
7                     consumer credit information or other information on  
8                     consumers for the purpose of furnishing *consumer reports* to  
                      third parties, and which uses any means or facility of  
                      interstate commerce for the purpose of preparing or  
                      furnishing consumer reports.

9     15 U.S.C. § 1681a(f) (emphasis added).

10           Under the FCRA, a “consumer report” is:

11                    any written, oral, or other communication of any information  
12                    *by a consumer reporting agency* bearing on a consumer’s  
13                    credit worthiness, credit standing, credit capacity, character,  
14                    general reputation, personal characteristics, or mode of living  
                      which is used or expected to be used or collected in whole or  
                      in part for the purpose of serving as a factor in establishing  
                      the consumer’s eligibility for . . . employment purposes.

15     *Id.* § 1681a(d)(1) (emphasis added). The parties disagree as to whether Fieldprint  
16     “regularly assembles or evaluates information about consumers.” *See id.* § 1681a(f). As  
17     the moving party, Defendant has the burden to demonstrate an absence of a genuine  
18     dispute of material fact. *See Celotex*, 477 U.S. at 323.

19           Defendant contends Fieldprint is not a CRA because Fieldprint is an “FBI-  
20     authorized ‘channeler’ of data” that merely “transmits unadulterated information it  
21     obtains from the FBI directly to [Defendant].” (Mot. Summ. J. at 2.) Because “Fieldprint  
22     does not ‘assemble’ or ‘evaluate’ consumer information that it transmits from the FBI to  
23     [Defendant] within the meaning of the FCRA,” Defendant alleges that the “information  
24     provided via Fieldprint’s channeling service is not a consumer report.” (Mot. Summ. J. at  
25     5, 7.) While not conceding that Fieldprint regularly—or even ever—assembles or  
26     evaluates consumer information, Defendant argues that “Fieldprint’s status as a CRA is  
27     determined by the transaction at issue.” (Reply at 4.)  
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1           The Court finds that Defendant successfully meets its burden to establish an  
2       absence of any genuine issue of material fact. First, Defendant provided evidence  
3       indicating that Fieldprint acts as a conduit rather than a CRA. Specifically, Defendant  
4       submitted the Declaration of James Figliuolo (Doc. 38-1 at 1–3, Figliuolo Decl.), the  
5       Declaration of Morris Gargiule (Doc. 38-2 at 1–3, Gargiule Decl.), and a copy of the  
6       National Crime Prevention and Privacy Compact that Defendant entered into with the  
7       FBI (Doc. 38-1 at 4–5, Compact). Pursuant to this Compact, Defendant “is granted  
8       permission to utilize Fieldprint to perform ‘Channeler’ functions” requiring access to  
9       CHRI “when necessary[] to promote or maintain the security of the banking institution.”  
10      (Compact at 4.) The only “channeler” functions Fieldprint is authorized to perform  
11      include “fingerprint submissions of authorized JPMorgan Chase Bank  
12      applicants/employees” and “the concomitant dissemination of national fingerprint-based  
13      criminal history record check results to only the authorized officials of JPMorgan Chase  
14      who are involved in the human resources decisions.” (Compact at 5.) Therefore,  
15      Fieldprint electronically submits fingerprints to—and later receives CHRI from—the FBI  
16      on behalf of Defendant. (Figliuolo Decl. at 2.)

17           Notably, the Compact does not explicitly specify that Fieldprint’s actions as a  
18      channeler will be monitored through the FCRA. (*See* Compact at 4–5.) Rather, according  
19      to the Outsourcing Standard for Channelers, Defendant “is responsible for the actions of  
20      the contractor and shall monitor the contractor’s compliance to the terms and conditions  
21      of the Outsourcing Standard for Channelers.” (Compact at 5.) Further, through the  
22      Outsourcing Standard for Channelers, “the FBI will perform limited auditing functions on  
23      behalf of [Defendant].” (Compact at 5.) This suggests that Fieldprint’s role as a channeler  
24      is akin to an agent acting at the behest of its principals—Defendant and the FBI;  
25      therefore, as an agent without control over its principals’ employment decisions,  
26      Fieldprint is not a CRA. *See Mattiaccio v. DHA Grp., Inc.*, 21 F. Supp. 3d 15, 23–25  
27      (D.D.C. 2014) (finding that “attorney with a clear fiduciary and agency relationship to the  
28      employer-client at whose behest the attorney-defendant conducted a background



1 investigation” and who was not shown to have “made the decision to terminate Plaintiff”  
 2 was not a CRA); *Weidman v. Fed. Home Loan Mortg. Corp.*, 338 F. Supp. 2d 571, 575–  
 3 77 (E.D. Pa. 2004) (finding that defendant who merely requested “credit reports on behalf  
 4 of a contracting lender” in order to assist lenders in deciding whether to offer credit, acted  
 5 as lenders’ agent and, therefore, was not a CRA because it acted “at the behest of  
 6 principals with primary control over the process of obtaining consumer reports and  
 7 making credit decisions”).

8 The Declaration of Morris Gargiule, Vice President of Operations at Fieldprint,  
 9 also supports Defendant’s contention that Fieldprint is a mere channeler of unadulterated  
 10 information. According to this Declaration, Fieldprint personnel cannot access, view,  
 11 analyze, manipulate, alter, or evaluate the CHRI transmitted by the FBI to Defendant.  
 12 (Gargiule Decl. at 2.) Rather, Fieldprint “provides a technical conduit or connection  
 13 whereby the FBI can transmit CHRI” to Defendant. (Gargiule Decl. at 2.) According to  
 14 the Federal Trade Commission’s report, *40 Years of Experience with the Fair Credit*  
 15 *Reporting Act*:

16 An entity that performs only mechanical tasks in connection  
 17 with transmitting consumer information is not a CRA because  
 18 it does not assemble or evaluate information. For example, a  
 19 business that delivers records, without knowing their content  
 20 or retaining any information from them, is not acting as a  
 CRA even if the recipient uses the records to evaluate the  
 consumer’s eligibility for insurance or another permissible  
 purpose.

21 F.T.C., *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report*  
 22 *with Summary of Interpretations*, 2011 WL 3020575, at \*22 (July 2011).

23 Similarly, Fieldprint is not a CRA within the meaning of the FCRA because it  
 24 “does not ‘assemble’ or ‘evaluate’ [the] consumer information that it transmits from the  
 25 FBI” to Defendant. (Mot. Summ. J. at 5); see *McCalmont v. Fed. Nat. Mortg. Ass’n*,  
 26 No. 2:13-CV-2107-HRH, 2014 WL 3571700, at \*4 (D. Ariz. July 21, 2014) (“Because  
 27 Fannie Mae is not actively involved in the compilation of the consumer information, it is  
 28 not regularly assembling and evaluating consumer information and thus it cannot be a



‘consumer reporting agency.’”); *Smith v. Busch Entm’t Corp.*, No. CV-3:08-772-HEH, 2009 WL 1608858, at \*3 (E.D. Va. June 3, 2009) (holding that the VA State Police Central Criminal Records Exchange is not a CRA merely because it “provides employers [with] criminal conviction data on employees or prospective employees”); *Ori v. Fifth Third Bank, & Fiserv, Inc.*, 603 F. Supp. 2d 1171, 1175 (E.D. Wisc. 2009) (“Obtaining and forwarding information does not make an entity a CRA.”) (citing *DiGianni v. Stern’s*, 26 F.3d 346, 349 (2d Cir. 1994) (holding that “a creditor who merely passes along information concerning particular debts owed to it” is not a CRA)); *D’Angelo v. Wilmington Med. Ctr., Inc.*, 515 F. Supp. 1250, 1253 (D. Del. 1981) (stating that the FCRA’s assembling or evaluating requirement “implies a function which involves more than receipt and retransmission of information”). Furthermore, “the duties imposed on consumer reporting agencies by the Act are such that it is unlikely that Congress intended them to apply to persons or entities remote from the one making the relevant credit or employment decision.” *D’Angelo*, 515 F. Supp. at 1253.<sup>1</sup>

Next, Defendant demonstrates that Fieldprint does not “regularly engage[] in whole or in part in the practice of assembling or evaluating” information for any third party, *see* 15 U.S.C. § 1681a(f) (emphasis added), through the second Declaration of

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<sup>1</sup> Defendant contends Plaintiff, “[i]n an effort to avoid the FCRA’s plain language, . . . resorts to policy arguments that the FBI CHRI data should be governed by the FCRA.” (Reply at 7 n.5). Specifically, Plaintiff states that the “potential for inaccurate or incomplete information” still exists in the FBI’s CHRI data, so “[c]onsumers are entitled to see what the employer is seeing before the employer takes adverse action against them.” (Resp. at 6). Although Plaintiff claims that “the legislative purpose of the FCRA’s provisions concerning the use of consumer reports for employment purposes” supports the conclusion that Fieldprint is a CRA under the FCRA’s plain language, (Resp. at 3–4), the Court is not convinced. The primary purpose of the FCRA is “to protect consumers against inaccurate and incomplete credit reporting.” *Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1060 (9th Cir. 2002). “Congress enacted the Fair Credit Reporting Act . . . in 1970 ‘to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.’” *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009) (internal citation omitted). Furthermore, the Court agrees with Defendant that “[i]f Congress had been concerned about the accuracy of the information provided by the FBI, then it could have made the FCRA applicable to federal agencies.” (Reply at 7 n.5); *see Ollestad v. Kelley*, 573 F.2d 1109, 1111 (9th Cir. 1978) (“[T]he lack of express reference to federal agencies in the act or in the legislative history is some indication that Congress did not intend to place federal agencies within the purview of the FCRA.”) (citations omitted).

1 Morris Gargiule, (Doc. 46-1 at 1–2, Gargiule Decl. 2).<sup>2</sup> In this Declaration, Gargiule  
 2 confirms that “Fieldprint does not perform *any* fitness determination or CHRI  
 3 adjudication services for *any* private employer.” (Gargiule Decl. 2 at 1) (emphasis  
 4 added). Rather, Fieldprint’s affiliate, Business Information Group (“BIG”)—a CRA and a  
 5 separate legal entity—performs these services if they are required. (Gargiule Decl. at 2.)  
 6 To the extent these fitness determinations or CHRI adjudication services could constitute  
 7 “assembling or evaluating” information, it is significant that Fieldprint *never* performs  
 8 these services itself. Consequently, Fieldprint cannot be said to be “regularly” involved in  
 9 the assembly or evaluation of information for any third party, and is thus not a CRA.

10 Although not necessary to resolve the present Motion, if the Court were to accept  
 11 Defendant’s alternative argument that the inquiry is limited to whether Defendant

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 13 <sup>2</sup> Although the term “regularly” is not defined in the FCRA, at least two Federal  
 14 District Courts have looked to the Fair Debt Collection Practices Act (“FDCPA”) for  
 15 guidance due to the similarities in language between the two statutes. *See Lewis v. Ohio*  
 16 *Prof’l Elec. Network LLC*, 190 F. Supp. 2d 1049, 1056–57 (S.D. Ohio 2002); *Johnson v.*  
 17 *Fed. Express Corp.*, 147 F. Supp. 2d 1268, 1275 (M.D. Ala. 2001). In *Johnson*, the court  
 18 looked to the court’s opinion in *Schroyer v. Frankel*, which noted that a debt collector  
 under the FDCPA—defined as “any person . . . who regularly collects or attempts to  
 collect” debts owed to others—“must have more than an ‘occasional’ involvement with  
 debt collection activities.” *Johnson*, 147 F. Supp. 2d at 1275 (quoting *Schroyer v.*  
*Frankel*, 197 F.3d 1170, 1173–74 (6th Cir. 1999)). Finding *Schroyer*’s analysis  
 persuasive, *Johnson* stated:

By regulating only those consumer reporting agencies who  
 ‘regularly engage’ in reporting, Congress opted for  
 incomplete coverage of the industry. Therefore, the court  
 holds that a consumer reporter must provide consumer reports  
 as part of his usual, customary, and general course of business  
 if he is to qualify as a ‘consumer reporting agency’ under the  
 FCRA. . . . Only those agencies that ‘regularly engage’ in  
 consumer reporting play a ‘vital role in assembling and  
 evaluating consumer credit and other information on  
 consumers.’ 15 U.S.C. § 1681(a)(3).

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 23  
 24 *Id.*

25 Similarly, the Fifth Circuit noted that “[t]he requirement that a consumer reporting  
 26 agency engage regularly in the collection of information was obviously intended to  
 27 protect individuals . . . who engage in activities that might fall within the definition of the  
 28 FCRA on a casual, one-time basis. *Hodge v. Texaco, Inc.*, 975 F.2d 1093, 1097 (5th Cir.  
 1992). Other guidelines suggest asking “whether the collection or evaluation of  
 information on consumers is a normal part of the entity’s activities and that, whenever the  
 occasion presents itself, the entity disseminates the information.” 1 Fed. Reg. Real Estate  
 & Mortgage Lending § 9:6 (4th ed.).

1 regularly assembles or evaluates information in the context raised by Plaintiff—that is,  
2 under the Compact with the FBI—Gargiule’s second Declaration affirms that “neither  
3 Fieldprint nor any of its affiliates, including BIG, performed a CHRI fitness  
4 determination or adjudication on Plaintiff Amanda Mix.” (Gargiule Decl. 2 at 2.) Rather  
5 than assembling and evaluating consumer information, Defendant asserts “Fieldprint’s  
6 only function was to serve as a technical connection between [Defendant] and the FBI”  
7 by processing “Plaintiff’s fingerprints and FBI background check.” (Reply at 5.)  
8 Defendant argues that, because it has demonstrated that Fieldprint did not assemble or  
9 evaluate information on Plaintiff in the transaction at issue, Defendant successfully  
10 established that it was not a CRA and thus “no consumer report [is] at issue.” (Reply at  
11 3.) A defendant may satisfy its initial burden at summary judgment if it “establishes that  
12 there is an absence of any genuine issue of material fact regarding whether it was acting  
13 as a consumer reporting agency in the alleged transactions.” *Liberi v. Taitz*, No. SACV-  
14 11-0485-AG-AJWX, 2012 WL 10919114, at \*5 (C.D. Cal. Mar. 16, 2012). “[The  
15 defendant] does not need to show that it never operated as a consumer credit reporting  
16 agency, only that it did not operate as a consumer credit reporting agency regarding the  
17 transactions at issue here.” *Id.* (citation omitted); *see also Marricone v. Experian Info.*  
18 *Sols., Inc.*, No. 09-CV-1123, 2009 WL 3245417, at \*1 (E.D. Pa. Oct. 6, 2009)  
19 (“[W]hether an entity is acting as a consumer reporting agency *in a particular situation* is  
20 a fact-specific inquiry. . . . Thus factual discovery will help determine whether  
21 Defendants acted as CRAs *in this case*.” (emphasis added)). Defendant has demonstrated  
22 the absence of a genuine dispute as to whether it is a CRA in its normal activities as well  
23 as in the transaction at issue.

24 On the other hand, Plaintiff fails to demonstrate a genuine issue of fact regarding  
25 whether Fieldprint acted as a CRA. Plaintiff only offers speculation, based on broad  
26 statements from Fieldprint’s website that Fieldprint acted as a CRA in the alleged  
27 transaction. (See Doc. 43 at 4–6.) However, “[a] summary judgment motion cannot be  
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1 defeated by relying solely on conclusory allegations unsupported by factual data.”  
2 *Taylor*, 880 F.2d at 1045.

3 Plaintiff claims that “[w]hether Fieldprint adjudicated Plaintiff’s report or made a  
4 fitness determination *with respect to Plaintiff* is irrelevant” because the “statute deems a  
5 person a CRA . . . based on whether it ‘*regularly* assembles or evaluates’ such  
6 information.” (Resp. at 7.) According to Plaintiff, “the definition of CRA is not case-  
7 dependent.” (Resp. at 2.) Even if the Court agrees with Plaintiff on this point, Plaintiff  
8 has failed to provide the Court with sufficient evidence to show Fieldprint regularly  
9 assembles or evaluates consumer credit information at all. The only “evidence” Plaintiff  
10 provides on this point is statements Plaintiff pulled from Fieldprint’s website that  
11 purportedly indicate that all of Fieldprint’s activities are governed by the FCRA. (*See*  
12 Doc. 43 at 4–6.) Plaintiff’s characterization of this evidence is misleading. Plaintiff does  
13 not mention another statement from Fieldprint’s website—which Defendant provides as  
14 evidence—indicating that Fieldprint’s *affiliates* actually perform any required fitness  
15 determination and CHRI adjudication services. (*See* Gargiule Decl. 2 at 1.) That  
16 Fieldprint’s affiliates may perform these services—rather than Fieldprint—is significant;  
17 Fieldprint and its affiliates are “distinct entities at all times relevant to this litigation.” *See*  
18 *Liberi*, 2012 WL 10919114, at \*7. Just because Fieldprint’s affiliates may offer “some  
19 services governed by the FCRA does not mean that all of [Fieldprint’s] services are so  
20 governed.” *Id.*; *see also Zabriskie v. Federal Nat’l Morg. Assoc.*, 109 F. Supp. 3d 1178,  
21 1183 n.6 (D. Ariz. 2014) (finding that Fannie Mae acts as a CRA when it licenses its  
22 software to lenders, but emphasizing “the limited scope of this finding” because “[t]he  
23 Court does not find that Fannie Mae *is at all times* acting as a [CRA].” (emphasis  
24 added)).

25 Plaintiff’s affidavits and evidence fail to contravene Defendant’s evidentiary  
26 material, which demonstrates that Fieldprint is not a CRA within the meaning of the  
27 FCRA. As a result, the Court concludes Defendant is entitled to judgment as a matter of  
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1 law on Plaintiff's claims under the FCRA and therefore grants Defendant's Motion for  
 2 Summary Judgment.

### 3 **III. RULE 56(d) MOTION**

#### 4 **A. Legal Standard**

5 Federal Rule of Civil Procedure 56(d) "offers relief to a litigant who, faced with a  
 6 summary judgment motion, shows the court by affidavit or declaration that 'it cannot  
 7 present facts essential to justify its opposition.'" *Michelman v. Lincoln Nat. Life Ins. Co.*,  
 8 685 F.3d 887, 899 (9th Cir. 2012) (quoting Fed. R. Civ. P. 56(d)). Accordingly, the Court  
 9 may "(1) defer considering the motion or deny it; (2) allow time to obtain affidavits or  
 10 declarations or to take discovery; or (3) issue any other appropriate order." Fed. R. Civ.  
 11 P. 56(d). Rule 56(d) only applies "where the non-moving party has not had the  
 12 opportunity to discover information that is essential to its opposition." *Roberts v. McAfee,*  
 13 *Inc.*, 660 F.3d 1156, 1169 (9th Cir. 2011) (citations omitted). When faced with a Rule  
 14 56(d) motion, "the Court should consider whether denying or deferring the motion for  
 15 summary judgment would promote greater justice." *Roosevelt Irrigation Dist. v. Salt*  
 16 *River Project Agric. Improvement & Power Dist.*, No. 2:10-CV-290-DAE-BGM, 2016  
 17 WL 3613278, at \*1 (D. Ariz. Feb. 22, 2016). The party requesting the motion to stay  
 18 under Rule 56(d) must make "[a] good faith showing that a continuance is needed" by  
 19 demonstrating, via "affidavit or declaration, the specific facts she hopes to elicit from  
 20 further discovery, that the facts sought exist, and that these facts are essential to resist the  
 21 summary judgment motion." *Smith v. Barrow Neurological Inst. of St. Joseph's Hosp. &*  
 22 *Med. Ctr.*, No. CV 10-01632-PHX-FJM, 2012 WL 3108811, at \*2 (D. Ariz. July 31,  
 23 2012) (citing *Cal. ex rel. Cal. Dep't of Toxic Substances Control v. Campbell*, 138 F.3d  
 24 772, 779 (9th Cir. 1998)). "[A] party cannot successfully oppose a summary judgment  
 25 motion by simply claiming that further discovery may yield unspecified facts that could  
 26 plausibly defeat summary judgment." *Id.* (citation omitted).

27 . . . .

28 . . . .

1           **B.     Analysis**

2           In the Motion to Stay Action under Rule 56(d), Plaintiff states that “the Court’s  
3 order did not permit enough time to conduct meaningful discovery” on the issue of  
4 whether the information Fieldprint assembles is only obtained from the FBI. (Mot. to  
5 Stay at 5 n.2.) “To the extent the definition of ‘assembly’ requires obtaining information  
6 from more than one source—it does not—Plaintiff requests a stay under Rule 56(d).”  
7 (Mot. to Stay at 5 n.2.) Plaintiff continues: “[s]hould the Court feel inclined to grant  
8 [Defendant’s] motion for summary judgment, Plaintiff requests a stay of its ruling to  
9 obtain discovery” in order to “see what [Defendant] received about her.” (Mot. to Stay at  
10 9.)

11           Defendant correctly notes:

12                   The Court entered an Order on May 12, 2016 permitting  
13 limited discovery on the issue of “whether in the context  
14 posed by Plaintiff, Fieldprint operates as a [consumer]  
15 reporting agency.” (Dkt. No. 35). The Order required  
16 discovery to be “completed” by June 17, 2016. *Id.* Plaintiff  
17 did not serve any written discovery on [Defendant] until June  
18 11, 2016. Plaintiff noticed no deposition of [Defendant] and  
19 served no deposition subpoenas or subpoenas *duces tecum* on  
any third parties, including Fieldprint. Nor did Plaintiff alert  
[Defendant] or the Court that she would be unable to  
complete discovery within the specified timeframe. Now, in  
Opposition to [Defendant’s] Summary Judgment Motion,  
Plaintiff claims that she has inadequate information to dispute  
the facts upon which [Defendant’s] Summary Judgment  
Motion is based.

20           (Reply at 2–3 n.1.)

21           Plaintiff did not meet her burden to show that she diligently worked on discovery  
22 within the allotted time period, nor did she make a “good faith showing that a  
23 continuance is needed.” *See Smith*, 2012 WL 3108811, at \*2. Plaintiff should have timely  
24 notified the Court if she felt she did not have enough time to conduct discovery on the  
25 issue in question by the Court’s discovery cut-off deadline of June 17, 2016, explaining  
26 therein any good faith efforts to comply with the Court’s Order.<sup>3</sup> Rule 56(d) only applies

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27  
28           <sup>3</sup> In the Affidavit submitted in support of Plaintiff’s Response and Motion to Stay,  
counsel states he “was not prepared to serve and complete discovery” by the deadline set  
by the Court. (Doc. 44 ¶ 17.) However, Plaintiff did not file a proposed discovery



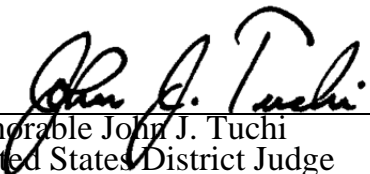
1 where the party opposing summary judgment has not had the opportunity to discover  
2 information it believes it needs. *See Roberts*, 660 F.3d at 1169. Here, Plaintiff cannot  
3 now be heard to complain when she had the opportunity to discover material information,  
4 but did not do so diligently and never asked the Court for more time. In other words, it  
5 would hardly be just to re-open discovery after Plaintiff disregarded the initial discovery  
6 deadline. Furthermore, Plaintiff has “failed to ‘proffer sufficient facts to show that the  
7 evidence sought exist[s], and that it would have prevented summary judgment.’” *Roberts*,  
8 660 F.3d at 1169 (quoting *Blough v. Holland Realty, Inc.*, 574 F.3d 1084, 1091 n.5 (9th  
9 Cir. 2009)). Due to her lack of diligence during the discovery period and failure to meet  
10 the Rule 56(d) burden, Plaintiff’s request to stay this action under Rule 56(d) is  
11 unavailable.

12 **IT IS THEREFORE ORDERED** granting Defendant’s Motion for Summary  
13 Judgment (Doc. 37).

14 **IT IS FURTHER ORDERED** denying Plaintiff’s Rule 56(d) Motion (Doc. 42 at  
15 9).

16 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment  
17 accordingly in favor of Defendant on all of Plaintiff’s claims against it and close this  
18 matter.

19 Dated this 6th day of October, 2016.

20  
21   
22 Honorable John J. Tuchi  
United States District Judge  
23  
24  
25  
26  
27

28 schedule in her initial brief (Doc. 33) and never filed a motion to extend the discovery  
deadline set in the Court’s Order (Doc. 35).